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PROPERTY AND SPECIAL TAXES DEPARTMENT
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March 24, 2009

TO: INTERESTED PARTIES

Enclosed is a copy of Current Legal Digest (CLD) number 2009-1 for your information and review. The annotations included in this CLD are new proposed annotations (underlined) and/or suggested revisions or deletion of existing annotations (indicated by ~~strikeout~~ and underline). After review, please submit any questions, comments, or suggestions for changes *in writing* by **Friday, April 24, 2009**. These may be sent by e-mail using the "Comments Form" on the Board's website (www.boe.ca.gov/proptaxes/cld.htm), fax or mail. Here is the mailing address:

Board of Equalization
County-Assessed Properties Division
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Please note, the new annotations and/or suggested revisions of existing annotations contained in the enclosed CLD are *drafts* and may not accurately reflect the Board's official position on certain issues nor reflect the language that will be used in the final annotation, if formally adopted.

CLDs are circulated for 30 days, at which time any questions are addressed and/or suggested modifications taken into consideration. After approval of the final version by the Board's Legal Department, the changes will be posted to the Board's website under "Annotations" (www.boe.ca.gov/proptaxes/annocont.htm). After all proposed changes have been resolved, the CLD will become obsolete and deleted from the website.

This CLD is posted on the Board's website at www.boe.ca.gov/proptaxes/cld.htm. Copies of the backup correspondence are linked to each annotation via the annotation number. If a link does not work, please let us know by using the "Comments Form" on our website (www.boe.ca.gov/proptaxes/cld.htm). If you have any questions, please contact Glenna Schultz at 916-324-5836.

Sincerely,

/s/ David J. Gau

David J. Gau
Deputy Director
Property and Special Taxes Department

DJG/grs
Enclosure

PROPERTY AND SPECIAL TAXES DEPARTMENT

PROPERTY TAXES CURRENT LEGAL DIGEST NO. 2009-1

March 24, 2009

220.0000 CHANGE IN OWNERSHIP

[220.0385.005](#) **Limited Partnership.** Where a legal entity transfers to a withdrawing owner that portion of real property representing the withdrawing owner's proportionate share of entity ownership, in redemption of its ownership interest, the withdrawing owner becomes a tenant in common with the legal entity. The transfer to the withdrawing owner is excluded from change in ownership under Revenue and Taxation Code section 62(a)(2) and Property Tax Rule 462.180(b)(2). As a result of the withdrawal, each remaining owner's interest in the legal entity would accordingly increase, but such increases would be excluded from change in ownership under Rule 462.180(d)(4). The remaining legal entity owners become original co-owners. If a remaining owner of the legal entity obtains a majority ownership interest as a result of the withdrawal, the obtaining of control would not result in a change in ownership of the portion of real property still owned by the legal entity, because the section 62(a)(2) exclusion takes precedence over the change in control provision of section 64(c)(1). C 1/13/2009.

[220.0454](#) **Original Coowners.** Where a legal entity transfers to a withdrawing owner that portion of real property representing the withdrawing owner's proportionate share of entity ownership, in redemption of its ownership interest, the withdrawing owner becomes a tenant in common with the legal entity. The transfer to the withdrawing owner is excluded from change in ownership under Revenue and Taxation Code section 62(a)(2) and Property Tax Rule 462.180(b)(2). As a result of the withdrawal, each remaining owner's interest in the legal entity would accordingly increase, but such increases would be excluded from change in ownership under Rule 462.180(d)(4). The remaining legal entity owners become original co-owners. If a remaining owner of the legal entity obtains a majority ownership interest as a result of the withdrawal, the obtaining of control would not result in a change in ownership of the portion of real property still owned by the legal entity, because the section 62(a)(2) exclusion takes precedence over the change in control provision of section 64(c)(1). C 1/13/2009.

[220.0457](#) **Original Transferor.** Two persons hold title to property as joint tenants. Each propose to create a revocable trust that provides that upon the death of the trustor, the property will be held in trust for the benefit of the other joint tenant who will have the use of income and principal for his/her lifetime. Upon the transfer to their respective trusts, the two persons will become original transferors pursuant to Property Tax Rule 462.050(b)(1). A trust providing the surviving joint tenant a life estate is consistent with the right of survivorship. There will be no change in ownership upon the death of the first joint tenant because the interest will vest in an original transferor. However, when the last remaining original transferor dies, there will be a 100 percent change in ownership, unless an exclusion applies. C 10/28/2008.

[220.0817](#) **Trusts—Option to Terminate.** A trustor transferred property to an irrevocable trust. The trust provided that the trust was irrevocable during the trustor's lifetime. The beneficiaries of the trust were the trustor's children. The trust provided that, upon the trustor's death, the trust could be terminated by the beneficiaries at any time. However, the

fact that the trust provided the beneficiaries with an option to terminate the trust does not make the trust revocable upon the trustor's death.

A revocable trust is generally understood to be a trust in which the *trustor* retains a power to revoke the trust, not the beneficiaries. Thus, only trusts that may be revoked by the trustor are considered revocable for property tax purposes. C 9/17/2008.

220.0824 Trusts—Transferor. Where beneficiaries under a trust have the right to revoke the trust after the trustor's death, an unexercised right to terminate the trust does not make the life beneficiaries the transferors of the trust property to the remaindermen. The trustor is the transferor of the property for change in ownership purposes, and potential exclusions should be analyzed accordingly. C 9/17/2008.

515.0000 HOUSEHOLD FURNISHINGS

515.0004 Leased Equipment. Under Property Tax Rule 134, ownership of household furnishings, personal effects, and pets is required for such property to be eligible for the household furnishings exemption. Personal property, including medical and ambulatory equipment, that is leased to individuals for home use is not eligible for the exemption. C 10/14/2008.

610.0000 NEWLY CONSTRUCTED PROPERTY

610.0088 Solar Energy System. An active solar energy system installed on another's real property may be considered a fixture depending on the intent of the parties and the extent of installation. Property Tax Rule 122.5 provides several tests for determining whether a piece of personal property becomes a fixture upon its attachment to land or an improvement. If an active solar energy system is classified as a fixture, it may qualify for exclusion from assessment as new construction under Revenue and Taxation Code section 73. C 9/17/2008.

625.0000 PARENT-CHILD TRANSFER

625.0237 Trusts—Transferor. Where beneficiaries under a trust have the right to revoke the trust after the trustor's death, an unexercised right to terminate the trust does not make the life beneficiaries the transferors of the trust property to the remaindermen. The trustor is the transferor of the property for change in ownership purposes, and potential exclusions should be analyzed accordingly. C 9/17/2008.

660.0000 POSSESSORY INTEREST

660.0173 Military Privatization Housing. Even though an entity may have title to the improvements, ownership of on-site utilities, a purchase option in the event of a military base closure, and tort liability, the contractual restrictions on control and profitability are sufficient to create a principal/agent relationship between the government and the entity. For this reason, no taxable possessory interest is created because the entity lacks independence. C 9/24/2008.

755.0000 STATE-ASSESSED PROPERTY

755.0089 Solar Energy System. An owner of a solar energy system installed on another's real property, where the owner of the system sells to the real property owner the electricity generated by the system, is not subject to assessment by the Board. Although the Board is generally authorized to assess companies that transmit or sell electricity, an exception occurs where the electricity is not generated from a conventional power source. Solar power is not included in the Public Utilities Code definition of "conventional power source." Accordingly, such solar energy systems are subject assessment by county assessors under the rules of local assessment, including, if applicable, the exclusion from assessment as new construction under Revenue and Taxation Code section 73. C 9/17/2008.